SECTION 9 CONTENTS

9. How Do I Comply With Spill Or Chemical Release Requirements?

9.1 Introduction

> ***Check State and Local Requirements:*** *Your state and municipality may have requirements in addition to the federal requirements with which you must comply. You should check with your state or local environmental agencies to determine these requirements.*

This section provides an overview of the emergency planning, reporting, notification, and response requirements across major statutes administered by EPA, (plus related OSHA requirements) that apply to: (1) the storage of oils and hazardous materials and (2) the spills and releases of pollutants, such as oils, hazardous materials and wastes. The term "hazardous material" is used here in the same way as used in Section 3.0 *Understanding the Process: Inputs, Outputs and Applicable Federal Environmental Regulations.* Because these requirements are explained in detail in the statue-specific sections of the guide, this section does not repeat this information, but rather, briefly compares and contrasts the regulatory approaches and the different terminology for regulated substances.

The primary purpose of this section is to assist you in understanding the similarities and differences among these requirements and their interconnections, and to provide a single place of reference against which you should check the applicable regulatory requirements for your inputs and waste outputs. Another purpose is to re-emphasize the importance of complying with these requirements, some of which are relatively new, such as the Risk Management Program under the Clean Air Act. Please read this section very carefully, become knowledgeable about the relationship between these requirements, and make sure that your staff knows what to do in the event of an emergency.

Regulatory Approaches

Some federal statutes, such as the Clean Air Act (CAA), Clean Water Act (CWA), Oil Pollution Act (OPA), and the Resource Conservation and Recovery Act (RCRA), have planning, reporting, notification and response requirements that pertain to spills or releases to **specific environmental compartments** (e.g., air, water, land). For example:

- CWA and OPA requirements pertain to spills or releases to surface water and/or groundwater.
- CAA requirements apply to releases to ambient air.
- RCRA requirements pertain to spills or releases to land.

In addition, some requirements under the CWA, OPA, and RCRA are designed to alert publicly owned treatment works (POTWs) of impacts from spills of oil(s), hazardous waste, or other

hazardous materials into the sewer system. In addition, there are requirements to notify appropriate authorities of discharges of hazardous waste to septic systems.

In contrast to this approach, the planning, reporting, notification, and response requirements under the Emergency Planning and Community Right-to-Know (EPCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) focus on **specific substances**, irrespective of the environmental compartment into which a spill or release might occur.

For either approach, the particular substances subject to the requirements are defined through the regulations under each federal statute. The terms used for regulated materials under each program differ, and this can be confusing. Table 9-1 *Terms for Regulated Materials Under Various Statutes* shows terms used under the six (6) statutes administered by EPA, plus OSHA. Each program defines and usually lists the materials or substances that are regulated. A material or substance may appear on one or more of these lists. There is, however, no single "master" list to which you can refer. Also these lists may be modified or amended from time to time. Therefore, you should obtain and review each definition and list to determine what materials or substances at your facility may be regulated, and you should keep abreast of relevant changes.

Table 9-1. Terms for Regulated Materials Under Various Statutes

Statute	Term Used	CFR citation
EPCRA	Extremely hazardous substances	40 CFR 355
OSHA	Hazardous chemicals	29 CFR 1910
CERCLA	Hazardous substances	40 CFR 302
CWA	Hazardous substances	40 CFR 116 and 117
OPA	Oil (petroleum or non-petroleum)	40 CFR t 112
RCRA	Hazardous wastes	40 CFR 261
CAA	Regulated substances	40 CFR 68

Organization of this Section

Planning and reporting activities are critical in preventing accidental releases of regulated materials at any facility. For the purposes of this guide, Section 9.2 *Emergency Planning and Reporting Requirements* groups these requirements across several statutes. The term "reporting" is used in a particular way as highlighted in the text box. Similarly, Section 9.3 *Notification and Response Requirements* groups the notification and response requirements across several statutes This structure for dividing and grouping these requirements was selected solely for the purpose of comparing and contrasting similar requirements across

statutes. Keep in mind, however, that implementation of these requirements–for planning, reporting, notification, and response to releases–at your facility should be integrated.

The term "reporting" as described in Section 9.2 Emergency Planning and Reporting Requirements, refers to the inventory reports that must be made regarding the hazardous chemicals that are stored onsite at a facility. This type of inventory reporting should take place before a spill occurs to ensure proper emergency response to the spill. This reporting is different from the notification requirements (described in Section 9.3 Notification and Response Requirements) triggered when accidental spills or releases do occur.

9.2 Emergency Planning and Reporting Requirements

This section provides an overview of the planning and reporting requirements under each statute. This will allow you to see the similarities and differences, and the interconnections among these requirements. Table 9-2 *Major Federal Regulations With Planning and Reporting Requirements* provides references to these requirements under EPA's statutes, plus OSHA. For a fuller explanation of these planning requirements, refer to the statute-specific sections of the guide for information and references.

Table 9-2. Major Federal Regulations With Planning and Reporting Requirements

Subject	Law	Reference to Regulation
EPCRA Planning Requirements	EPCRA	40 CFR 355
EPCRA Hazardous Chemical Inventory	EPCRA	40 CFR 370
EPCRA Toxic Chemical Release Reporting	EPCRA	40 CFR 372
SPCC Plans	CWA and OPA	40 CFR 112
OPA Facility Response Plans	CWA amended by OPA	40 CFR 112
CAA Risk Management Plans	CAA Section 112(r)	40 CFR 68
RCRA Contingency Plans	RCRA	40 CFR 262
OSHA Process Safety Management[1]	OSHA	29 CFR 1910
Hazard Communication Standard[1]	OSHA	29 CFR 1910
Hazardous Waste Operations and Emergency Response (HAZWOPER)[1]	OSHA	29 CFR 1910

[1] These requirements are mentioned here because of their relationship with EPCRA, however, they will not be discussed in detail. Please see 29 CFR 1910 for more information.

Table 9-2 includes OSHA requirements because of the relationship between several OSHA programs and EPA's programs--for example, the relationship between CAA Risk Management Plans and OSHA Process Safety Management, and the relationship between EPCRA Hazardous Chemical Inventory Reporting and OSHA's Hazard Communications Standard.

Emergency planning and reporting are important activities at every facility. Your facility can prepare for an accidental spill or release by creating required prevention and response plans, and by participating in local emergency planning activities. A new approach to handle planning requirements is to combine two or more plans into one integrated plan containing all the requirements for your facility. **Before doing this, you should check with your state or your EPA Regional Office to find out if this is an accepted practice.**

9.2.1 EPCRA Emergency Planning and Reporting–Other Than Section 313

Section 7.0 *How Do I Comply With the Emergency Planning and Community Right-to-Know Act Regulations?* is the primary section in this guide to refer to for information about EPCRA requirements. This section contains only a very brief summary. Keep in mind the following, critical distinctions among the sections of EPCRA, as presented in Table 9-3. First, Sections 301-303, 311, and 312 focus on the amount of chemicals **present at** your facility. Whereas Section 313 focuses on the amounts of chemical **manufactured, processed, or otherwise used**.

Table 9-3. Summary of EPCRA Regulatory Criteria

Subject	Statutory Section	Regulatory Criteria	Reference to Regulation
Emergency Planning	Sections 301-303	"Present at"	40 CFR 355
Hazardous chemical inventory and reporting	Sections 311 and 312	"Present	40 CFR 370
Toxic chemical release reporting	Section 313	"Manufactured, processed or used"	40 CFR 372

Emergency Planning. Congress designed the emergency planning sections (Sections 301-303) of EPCRA to develop state and local governments' emergency response and preparedness capabilities through better coordination and planning, especially with the local community. The responsibility of your facility to participate in emergency planning activities depends on the presence of EPCRA extremely hazardous substances (EHSs) in amounts equal to or in excess of the threshold planning quantities (TPQs). EHSs typically found at food processing facilities include ammonia (for refrigeration), chlorine (for disinfection), and nitric and sulfuric (for cleaning) acids. See Section 7.2 *Emergency Planning* for more information about these requirements.

Hazardous Chemical Inventory and Reporting (MSDS and Tier Reporting). The hazardous chemical inventory and reporting provisions outlined in EPCRA Sections 311 and 312 require you to take an inventory of the EPCRA EHSs (40 CFR 355, Appendices A and B) and the OSHA hazardous chemicals present onsite at your facility in amounts equal to or in excess of TPQs. Your facility is subject to these reporting requirements if: (1) your facility is regulated under OSHA's Hazard Communications Standard (29 CFR 1910.1210), and (2) your facility equals or exceeds EPA-established thresholds for EPCRA EHSs and OSHA hazardous chemicals onsite at any one time. The thresholds that you must use varies depending on whether the chemical is classified as an EPCRA EHS or OSHA hazardous chemical. See Section 7.4 *Hazardous Chemical Inventory and Reporting* for more information on these requirements.

Exemptions from these requirements exist for specific chemicals under OSHA and EPCRA Section 311(e). One exemption under Section 311(e) covers any food, food additive, color additive, drug or cosmetic regulated by Food and Drug Administration (FDA). Remember, these exemptions apply to specific chemicals within the scope of the exemption only, not to all hazardous chemicals at a particular facility.

- ***MSDS and Hazardous Chemical Inventory Reporting.*** Under Section 311, you must submit a **one-time notification** of the EPCRA EHSs and OSHA hazardous chemicals present at your facility in amounts equal to or in excess of the TPQs to the SERC, LEPC, and local fire department. To meet the reporting requirement, your facility must submit either an MSDS **or** a list of the EPCRA EHSs and OSHA hazardous chemicals grouped by hazard category. Information reported under Section 311 must be updated.

- ***Tier Reporting*****.** Under Section 312, your facility must meet an **annual reporting** requirements for EPCRA EHSs and OSHA hazardous chemicals in amounts equal to or in excess of threshold levels. If your facility equals or exceeds the threshold levels **at any time** (not the average amount onsite) in the preceding year, you must submit to the SERC, LEPC, and local fire department an "Emergency and Hazardous Chemical Inventory Form." This form must be submitted by March 1 and it covers the previous calendar year.

  EPA publishes two types of inventory forms, **Tier I** and **Tier II**, for reporting inventory information. While federal regulations require only the submission on a Tier I form, EPA encourages, and some states require, the use of the Tier II form. EPA distributes an electronic version of the Tier II form in both Windows and DOS formats.

For more information on EPCRA planning and reporting requirements, refer to Section 7.0 in this Guide or contact the RCRA/UST, Superfund and EPCRA Hotline at 1-800-424-9346 or 703-412-9810, or access EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) homepage at **http://www.epa.gov/ceppo/**.

9.2.2 EPCRA Toxic Chemical Release Reporting–Section 313

Section 7.5 *Toxic Chemical Release Reporting - EPCRA Section 313* is the primary section of this guide to refer to for information about EPCRA Section 313 reporting requirements. To assist food processing facilities in complying with the reporting requirements of EPCRA Section 313 and Section 6607 of the Pollution Prevention Act of 1990, EPA's Office of Pollution Prevention and Toxics (OPPT) has prepared a guidance manual, entitled *EPCRA Section 313 Reporting for Food Processors* (EPA 745-R-98-011, September 1998). This new guidance supplements the *TRI Forms and Instructions*. For more information, visit the TRI Homepage, **http://www/epa/gov/opptintr/tri.**)

EPCRA Section 313 requires certain designated businesses to submit annual reports to EPA (commonly referred to as Form R and Forms A) on the amounts of more than 600 EPCRA Section 313 chemicals and chemical categories released and otherwise managed (40 CFR 372). The standard report is Form R. However, to reduce the reporting burden for small businesses, EPA established an alternative threshold reporting level, known as Form A.

EPCRA Reporting Criteria. The following four questions will help you to determine if your facility must prepare a Form R report.

1. Is the SIC Code for your facility included in the list covered by EPCRA Section 313 reporting?

2. Does your facility employ 10 or more full time employees or their equivalent?

3. Does your facility manufacture (which includes importation), process, or otherwise use EPCRA Section 313 chemicals?

4. Does your facility exceed any applicable thresholds of EPCRA Section 313 chemicals?

If you answer "**No**" to <u>any one</u> of the first three questions, you are not required to prepare and submit Form R or Form A reports. If you answer "**Yes**" to <u>all</u> of the first three questions, you must then address question four.

Threshold Determinations. To address question four, you must do the following: a) complete a threshold calculation for each EPCRA Section 313 manufactured, processed or otherwise used at your facility; b) compare these calculations to the reporting thresholds shown below in Table 9-4; and c) for each EPCRA section 313 chemical exceeding a threshold, you must submit a Form R (or a Form A) report.

EPCRA Section 313 reporting requirements define three activity categories for each EPCRA Section 313 chemical. These categories include "manufacturing" (which includes importing), "processing" or "otherwise using."

Table 9-4. EPCRA Section 313 Activity Categories/Reporting Thresholds

Chemical Activity	Activity Threshold
Manufacturing	25,000 pounds/year
Processing	25,000 pounds/year
Otherwise Use	10,000 pounds/year

These activity thresholds apply to each EPCRA Section 313 chemical. Because each category is mutually exclusive of the others, you must conduct a separate threshold determination for each chemical for each activity category. The threshold determination is based **solely** on the quantity **actually** manufactured (including imported), processed, or otherwise used, **not** on the quantity of chemicals stored on-site or purchased.

Form R/Total Annual Reportable Amount. If your facility exceeds any one of the activity thresholds, then you must submit a Form R (provided that you also meet the SIC code and employee criteria). Among the information you must report for each EPCRA 313 chemical or chemical category that exceeds a reporting threshold, is the "**total annual reportable amount**" of "**releases and other waste management activities**." This amount is defined as follows: the sum of the on-site amounts released (including disposal), treated, combusted for energy recovery, and recycled, combined with the sum of the amounts transferred off-site for recycling, energy recovery, treatment, and release (including disposal). This total corresponds to the total of data elements 8.1 through 8.7 on the 1997 version of the Form R.

Form A. The Form A report, also referred to as the "Certification Statement "(59 FR 61488, November 1994), is an alternative to Form R. EPA developed Form A to reduce the annual reporting burden for facilities that meet certain criteria. The Form A Certification Statement must be submitted for each eligible EPCRA Section 313 chemical. Form A does **not** require your facility to report any estimate of releases and/or other waste management activities. Rather, your facility must simply certify that the total annual reportable amount does **not exceed 500 pounds** for that particular chemical**.**

EPCRA Section 313 Recordkeeping. EPA requires you to maintain records substantiating the Form R or Form A submission, for a minimum of three years (40 CFR 372.10). Each facility must keep copies of the Form R or Form A along with all supporting documents, calculations, work sheets, and other forms that you use to prepare the Form R or Form A. EPA may request this supporting documentation during a regulatory audit.

9.2.3 Oil Spill Prevention Plans (SPCC) and Response Plans (FRPs)

SPCC Plans. EPA first issued the Oil Pollution Prevention Regulation, known as the Spill Prevention, Control and Countermeasures (SPCC) regulation, under the CWA in 1973. It established requirements, including the SPCC Plan, for facilities to **prevent** oil spills from reaching navigable waters of the U.S., or adjoining shorelines (40 CFR 112.3 through 112.7). These requirements apply to **nontransportation-related facilities** that meet these criteria:

- Could reasonably be expected to discharge oil in harmful quantities into navigable waters of the United States or upon the adjoining shorelines, **AND**

- Have (1) an **aboveground** oil storage capacity of more than 660 gallons in a single container; **or** (2) a total aboveground oil storage capacity of more than 1,320 gallons; **or** (3) a total **underground** storage capacity of more than 42,000 gallons.

If your facility is subject to the SPCC requirements based on the above description, EPA requires you to prepare an SPCC plan and conduct an initial screening to determine whether you are required to develop a Facility Response Plan (FRP) (see below). Those facilities that could cause **substantial harm** to the environment must prepare and submit an FRP to EPA for review. **Significant and substantial harm** facilities also must meet these requirements.

SPCC-regulated facilities must also comply with other federal, state, or local laws, some of which may be more stringent.

The SPCC Plan is a written site-specific description detailing how a facility's operation complies with 40 CFR 112. In order to comply with 40 CFR 112, the SPCC Plan must be a carefully thought out plan, prepared in accordance with good engineering practices and which has the approval at a level with the authority to commit the necessary resources. While each SPCC Plan is unique, certain elements must be included in order for the SPCC Plan to comply with the provisions of 40 CFR 112. If a section does not apply to your facility, your Plan must state this. See Section 4.6.2 *SPCC Requirements* for specific elements to include in your SPCC plan.

***Facility Response Plans*.** In 1990, Congress passed the Oil Pollution Act (OPA) which amended Section 311 of the Clean Water Act to require **substantial harm** facilities to develop and implement FRPs. EPA's FRP requirements appeared as a final rule in the Federal Register on July 1, 1994 (40 CFR 112.20 and 112.21 and include Appendices A through F). Under the FRP requirements, owners and operators of facilities that could cause "substantial harm" to the environment by discharging oil into navigable water bodies or adjoining shorelines must prepare plans for responding, to the maximum extent practicable, to the worst case discharge and to a substantial threat of such a discharge of oil.

Facilities subject to the FRP requirements under 40 CFR 112.20 are referred to either as **substantial harm** facilities or **significant and substantial harm** facilities. FRPs from substantial harm facilities are **reviewed** by EPA while FRPs from significant and substantial harm facilities are **reviewed and must be approved** by EPA.

If subject to the FRP requirements, you must prepare and submit a FRP to the appropriate EPA Regional Office. To assist you in preparing a FRP, EPA has prepared and included a **model facility response plan** in 40 CFR 112.2, Appendix F. EPA recognizes that there may be many facilities with existing response plans prepared to meet other requirements. Under OPA, you do not need to prepare a separate FRP provided that the original response plan:

(1) satisfies the appropriate requirements and is equally as stringent;
(2) includes all elements described in the model plan;
(3) is cross-referenced appropriately; and
(4) contains an action plan for use during a discharge.

EPA also recognizes that many facilities have established SPCC plans. Although response plans and prevention plans are different, and should be maintained separately, some sections of the plans may be the same. Under OPA regulations, you are allowed to reproduce or use those sections of the SPCC plan in the FRP. For more information on FRPs, see Section 4.6.3 *Facility Response Plans* or visit EPA's Oil Program Homepage at **http://www.epa.gov/oilspill/**.

9.2.4 CAA Risk Management Planning

As required under Section 112(r) of the amended CAA, EPA has promulgated the Risk Management Program Rule (40 CFR 68). The rule's main goals are to **prevent** accidental releases of regulated substances and to **reduce** the severity of those releases that do occur by requiring facilities to develop risk management programs. A risk management program must incorporate three elements: a hazard assessment, a prevention program, and an emergency response program. These elements are to be summarized in a risk management plan that will be made available to state and local government agencies and the public. Besides helping facilities prevent accidents, the rule can improve the efficiency of work operations by ensuring that workers are trained in proper procedures and by using preventive maintenance to reduce equipment breakdowns.

If your facility has more than a **threshold** quantity of any of the **140 regulated substances** in a single process, you are required to develop a risk management program and to summarize your program in a risk management plan by **June 21, 1999**. The plan you submit to EPA must summarize your program and must be made available to the public. Once your plan is submitted, it will be reviewed for accuracy and completeness. A site visit also may be conducted at your facility by either EPA, state, or local officials to determine whether your plan accurately reflects your risk management program in operation.

> ***Regulated Substances***. *EPA listed 140 regulated substances by rule published January 31, 1994; and amended the list by rule on December 18, 1997. EPA may amend the list in the future as needed.*

To make compliance easier for small businesses, EPA has worked with trade associations and other industry groups to develop a series of **industry-specific brochures** that will assist businesses in creating their risk management programs. In addition, EPA has been working with industry groups (e.g., ammonia refrigeration) to develop model risk management programs. To review this **model program**, refer to EPA's Chemical Accident Prevention and Risk Management Planning website at **http://www.epa.gov/swercepp/acc-pre.htm#Model Plans/**.

For more information about risk management planning requirements and industry-specific brochures, see EPA's Chemical Emergency Preparedness and Prevention Office's Homepage at **http://www.epa.gov/ceppo/** or see Section 6.4 *Risk Management Planning* or Appendix A.3. *Summary of Principal Regulations Under the Clean Air Act* of this document. You also may obtain copies of the rule and a wide variety of technical assistance materials, as well as answers to your specific questions, from EPA's RCRA/UST, Superfund and EPCRA hotline at 1-800-424-9346 or 703-412-9810. Also check with your industry trade association for assistance in communicating with the public about risk management programs.

9.2.5 RCRA Contingency Plans

If you are a **small** or **large** quantity generator of hazardous waste, the emergency preparedness requirements under RCRA require that you develop a contingency plan for responding to spills or releases of hazardous wastes. A contingency plan will help you look ahead and prepare for accidents that could possibly occur at your food processing facility. If you are a large quantity generator (LQG), you are required to have a ***written contingency plan***. If you are a small quantity generator (SQG), you must have ***basic contingency procedures*** in place. Although a **written** contingency plan is not federally required for SQGs or conditionally exempt small quantity generators (CESQGs), it is strongly recommended. It also is important to check with your state and local authorities for any additional contingency plan or emergency preparedness requirements. See Table 8-3 in Section 8.0 *How Do I Comply With the Hazardous Waste Regulations?* for more information on contingency plan requirements for LQGs and SQGs.

Keep in mind that employees who are responding to releases of hazardous substances and hazardous waste are required to be trained under OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) requirements (see 29 CFR 1910.120).

9.3 Notification And Response Requirements

Releases or spills can occur, regardless of the amount of planning and prevention activities being conducted. The purpose of this subsection is to provide a single, general reference place of what you are required to do in response to a release or spill to the environment. Depending on the type of material released to the environment, there are various notification and response requirements under several EPA environmental statutes with which you must comply. These regulations are listed in Table 9-5.

Table 9-5. Major EPA Regulations that Address Notification and Response Requirements

Subject	Law	Reference to Regulation
EPCRA Release Notification	EPCRA	40 CFR 355
CERLCA Release Notification	CERCLA	40 CFR 302
Notification of Spills of Oil	CWA	40 CFR 110, 116, and 117
Notification of Spills of Hazardous Substances	CERCLA	40 CFR 300 and 302
Notification of Slug Loading to POTW	CWA	40 CFR 403
Notification of discharge of hazardous waste to POTW	CWA	40 CFR 403
Notification of discharge of hazardous waste to septic system	CWA	40 CFR 144
RCRA Emergency Response	RCRA	40 CFR 262
RCRA UST Emergency Response	RCRA	40 CFR 280

Notification is the requirement to notify the appropriate authorities of a release to an environmental compartment (e.g., water, air, land). These authorities may include federal, state, and/or local government regulatory agencies, an entity with emergency planning respnsibilities such as a LEPC, or an organization responsible for responding to emergencies such as a fire department. The notification requirements are specific to each program/statute.

They are usually, but **not always**, triggered by the spill or release of a defined threshold or quantity of a substance. Knowing how these thresholds or quantities apply to your facility is critical. Sometimes, as in the release of an oil in any amount, or of a CERCLA hazardous substance in an amount that exceeds the reportable quantity, you are required to call the **National Response Center at 1-800-424-8802**. In other instances, such as the release of an EPCRA extremely hazardous substance in an amount that exceeds the reportable quantity, you are required to contact your SERC and LEPC. Table 9-6 summarizes **who** to notify and **when** for each type of notification and response requirement. (Table 9.4 provides CFR citations to each requirement.)

Response requirements specify certain procedures to be followed when responding to a spill or release, such as how to contain the release and who to contact. One of the most important aspects of the notification and response requirements is the timeframe within which the agency or emergency responder must be notified. This timeframe is typically immediately and by telephone. Several statutes require a **written follow up** notification within a specified period of time.

Table 9-6. Notification and Response Requirements

Subject	Law	Who to Notify	When
EPCRA Release Notification	EPCRA	SERC, LEPC	Immediately
CERLCA Release Notification	CERCLA	NRC	Immediately
Notification of Spills of Oil	CWA	NRC	Immediately
Notification of Spills of Hazardous Substances	CERCLA	NRC	Immediately
Notification of Slug Loading to POTW	CWA	POTW or state authorities	Immediately
Notification of discharge of hazardous waste to POTW	CWA	POTW, State Haz. Waste Authority, EPA Regional Waste Management Div. Director	Immediately; In writing
Notification of discharge of hazardous waste to septic system	CWA	EPA Regional UIC Well Program, and state UIC Program authorities	Immediately
RCRA Emergency Response	RCRA	In event of fire, call local fire department. In event of a fire, explosion or other release that could effect human health outside the facility, or if the spill has reached surface water, call the NRC.	Immediately
RCRA UST Emergency Response	RCRA	State UST permitting agency or EPA Region (whichever currently administers the UST program for your facility.	Within 24 hrs

9.3.1 EPCRA 304/CERCLA Section 103 Notification Requirements

The emergency release notification requirements set out in EPCRA and CERCLA enable federal, state, and local authorities to effectively prepare for and respond to chemical accidents. In order for a release of a EPCRA **extremely hazarous substance (EHS)** or CERCLA **hazardous substance** to be reportable, a certain amount must be released into the environment within a 24-hour period. This amount, called the **reportable quantity (RQ)**, triggers emergency release notification requirements. EHSs and their reportable quantities can be found in 40 CFR 355, Appendices A and B, and CERCLA hazardous substances and their reportable quantities can be found in 40 CFR 302, Table 302.4.

EPCRA Section 304 notification requirements are triggered for your facility if: (1) an EPCRA EHS or CERCLA hazardous chemical is **produced, used, or stored** at your facility*;* **AND** (2)

there is a release of a CERCLA hazardous substance or EHS into the environment with a potential to affect human health and the environment offsite that equals or exceeds a reportable quantity within a 24-hour period. If a release occurs, your facility is required to **notify the SERCS and LEPCs**. See Appendix B. *Resources* for a list of SERCs and LEPCs.

Under CERCLA, if you are the person in charge of a vessel or facility and there is a release within a 24 hour period of a CERCLA hazardous substance in an amount equal to or in excess of the RQ for that substance (CERCLA 103(a), 40 CFR 302.6), you are required to immediately notify the **National Response Center (NRC) at 1-800-424-8802**. There are six specific conditions that must be met to trigger the CERCLA requirement for notifying the NRC.

Releases That Are Not Reportable. There are several types of releases that are excluded from the requirements of both EPCRA and CERCLA release notification. These releases were excluded originally under CERCLA Section 101(22) because they are covered by other regulatory programs. The regulations found at 40 CFR 355.40(a)(v) extend these statutory exclusions under CERCLA to the release reporting requirements under EPCRA.

***Initial Notification*.** It is very important to notify the proper agency(s) and to do so as soon as practical for any reportable spill. Initial notifications can be made by telephone, radio, or in person. Under EPCRA, initial notification is required **immediately** upon discovering a spill. Thus the person making the report must use good judgement in determining how much time to spend in collecting information prior to making the notification. Specific information, such as the chemical name/identity of material(s) released, will be valuable.

***Follow-up Actions for a Spill or Release*.** After the initial communication is established with the appropriate agencies, your facility must provide a written follow-up emergency notice, as soon as practicable after the release. The follow-up notice or notices must update information provided in the initial notice and provide information on actual response actions taken, health risks associated with the release, and advice regarding medical attention necessary for exposed individuals.

Your state also may have requirements for notifications and emergency response actions. To identify the appropriate state agencies, call the RCRA/UST, Superfund and EPCRA Hotline at 1-800-424-9346 or 703-412-9810.

9.3.2 CWA/OPA Notification Requirements

Under OPA, EPA has established requirements to report spills of oil and hazardous substances to navigable water of the U.S., including adjoining shorelines. In addition, the requirements of the CWA, OPA and RCRA, are designed to alert POTWs of impacts from spills of oil, hazardous waste or other hazardous substances to the sewer systems. They are also designed to protect septic systems from discharges of hazardous waste.

Releases of Oil and Hazardous Substances to Water

Under the Oil Pollution Prevention Regulations, you are required to meet notification requirements for releases of oil and hazardous substances to navigable water or adjoining shorelines.

Notification - The "One" Immediate Phone Call to the NRC

NATIONAL RESPONSE CENTER

1-800-424-8802

In the Washington, D.C. area:

703-412-9810

For more information on the NRC, access http://www.epa.gov/oilspill/NRC

? Immediately notify the National Response Center (NRC) of discharges/releases of oils and hazardous substances by calling the NRC number.

? If notifying the NRC is not practicable, then immediately notify the pre-designated On-Scene Coordinator (OSC) of EPA or the USCG. (This means that you must know who your designated OSC is before the release or discharge occurs.)

? As required by the relevant Area Contingency Plan, report spills to the state, the tribal government, the territory or commonwealth where the spill occurred.

When an oil spill enters into or threatens any navigable water in the United States, coordinated teams of local, state, and national personnel are called upon to help contain the spill, clean it up, and assure that damage to human health and the environment is minimized. EPA has established requirements for reporting spills into navigable waters or adjoining shorelines. Specifically, facilities are required to report discharges of oil in quantities that may be harmful to public health or welfare or the environment.

EPA has determined that discharges of oil in quantities that may be harmful include those that: (1) violate applicable water quality standards; (2) cause a film or "sheen" upon or discoloration of the surface of the water or adjoining shorelines; or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Reporting to the National Response Center

Any person in charge of a vessel or onshore or offshore facility should notify the NRC at **1-800-424-8802** as soon as he/she had knowledge of a discharge from a vessel or facility. Spills or releases of oil which reach navigable waters or adjoining shoreline (including storm drains) or land areas which may threaten waterways must always be reported to the NRC.

When you contact the NRC, the staff person will ask you for the specific pieces of information. The NRC relays this spill information to EPA and the USCG, depending on the location of the incident. Specifically, representatives of the EPA or USCG, known as On-Scene Coordinators (OSCs), are notified. (See Section 4.6.4 Oil Spill Notification and Response for more information.)

***Additional reporting*.** In addition, if your regulated facility experiences a single discharge of more than 1,000 gallons of oil or discharges oil in harmful quantities into or upon navigable waters in two reportable spill events during any 12-month period, you must submit a spill report in writing to the EPA Regional Administrator within 60 days.

Releases of Hazardous Substances to Water

In the case of a spill of a hazardous substance released over a 24 hour period at your facility or from facility equipment, and the released material enters a "water of the U.S." in a quantity equal to or exceeding the reportable quantity in CERCLA Section 102, you must notify the NRC as required under CWA Section 311(b); 40 CFR 116 and 117. Also note that if a spill enters a separate storm sewer that discharges to a surface water, it is subject to notification requirements. If the spilled material enters a sewer that discharges to a POTW, and it is not from a mobile source (e.g., a truck), it is not subject to these CWA notification requirements; however, you must immediately notify the POTW.

Slug Loading to POTW

Slug loading is defined as any relatively large release of a pollutant that ordinarily might not cause a problem when released in small quantities. If you know of an occurrence of slug loading at your facility that could cause problems to the POTW, you are required to notify the POTW or state immediately of a discharge of wastewater (40 CFR 403).

Hazardous Waste Sewer Discharge Notification

To make sure that hazardous wastes are not avoiding regulation by being discharged into the sewer, EPA added a provisions to the pretreatment regulations (40 CFR 403) in 1990. You must notify the POTW, your EPA Regional Waste Management Division Director, and the state hazardous waste authority (40 CFR 403) of any discharge to the POTW of a substance that would be a hazardous waste under RCRA if:

- The waste is not acutely hazardous and **more than 15 kg** (about 2.4 gallons) are discharged in a calendar month; or

C The waste is acutely hazardous and any amount is discharged.

The hazardous waste sewer discharge notification must be in writing, and include:

- The name of the hazardous waste as listed in 40 CFR 261;
- The EPA hazardous waste number; and
- The type of discharge (e.g., "batch" for a single event spill, such as a drum or container; or "continuous" for a large spill that has not stopped).

If **more than 220 lb** (100 kg, or approximately 25 gallons) of hazardous waste is discharged to the sewer per month by your food processing facility, then you also must include the following information in the notification:

- The hazardous constituents in the waste;
- An estimate of how much hazardous waste (mass and concentration) was discharged to the sewer during that month; and
- An estimate of how much hazardous waste you will discharge in the next 12 months.

You should keep the telephone numbers of the people that you must notify (e.g., the POTW, your EPA Regional Waste Management Division Director, and the state hazardous waste authority) at the facility. Call your EPA and state regulatory agencies to get the appropriate contact numbers.

Hazardous Waste Septic System Notification

If the discharge of any amount of a hazardous waste is to a septic system, you must immediately notify the EPA Regional Underground Injection Control Program and the state Underground Injection Control Program. Call your EPA and state regulatory agencies to get the appropriate contact numbers.

9.3.3 RCRA Emergency Response Requirements

Your RCRA contingency plan should tell you what to do if you have an accidental or emergency release of a hazardous waste at your food processing facility, and what to do in case of emergencies such as fires or explosions (see Section 8.0 *How Do I Comply With the Hazardous Waste Regulations?* and Section 9.2.5 *RCRA Contingency Plans* for more information). In the event of a hazardous waste release, RCRA emergency response requirements contain the following procedures for responding to a spill or release of hazardous waste(s):

Under RCRA, materials used in cleanup operations following a hazardous material or oil spill are considered hazardous wastes. These cleanup materials are considered part of your total monthly accumulation and may affect your generator status. See Section 8.0 for information on determining generator status.

- Contain the flow of hazardous waste to the extent possible, and as soon as is possible, clean up the hazardous waste and any contaminated materials or soil.

- In the event of a fire, call the fire department and, if safe, attempt to extinguish the fire using a fire extinguisher. After the fire is out, contain the release as described above.

- In the event of a fire, explosion, or other release that could threaten human health outside the facility, or if you know that the spill has reached surface water, follow the instructions provided in Section 9.3.2.

All employees must know proper waste handling and emergency procedures. In addition, a person at your facility must be appointed to act as the emergency coordinator to ensure that emergency procedures are carried out properly. The responsibilities of the emergency coordinator are: (1) he/she will be available 24 hours a day (at the facility or by phone); and (2) he/she will know whom to call and what steps to follow in an emergency. See Section 8.0 *How Do I Comply With the Hazardous Waste Regulations?* for more information.

Keep in mind that employees who are responding to releases of hazardous substances and hazardous waste are required to be trained under OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) requirements (see 29 CFR 1910.120).

9.3.4 RCRA UST Emergency Response Requirements

RCRA includes emergency response requirements for leaking underground storage tanks (USTs) (in 40 CFR 280.53), including reporting, response, and cleanup procedures. If your facility has USTs that contain petroleum or hazardous substances, and you identify any of the following conditions associated with your UST(s), you must report:

- Unusual operating conditions exist (e.g., erratic behavior of product dispensing equipment, sudden loss of product from the UST system, or an unexplained presence of water in the tank) unless due to defective but not leaking equipment;

- Monitoring results (see Section 8.0) indicate that a release has occurred; or

- Regulated substances are observed or discovered at the UST site (e.g. free vapors in the soils, basements, sewer and utility lines, and/or a sheen on nearby surface waters).

Your report should be made within 24 hours to the state UST permitting agency or the EPA Region, whichever currently administers the UST program for your facility. To help identify who to contact, call EPA's RCRA/UST, Superfund and EPCRA Hotline at 1-800-424-9346 or 703-412-9810 or visit EPA's Office of Underground Storage Tanks website at **http://www.epa.gov/OUST/**.

In addition to this report, RCRA (40 CFR 280) requires that you immediately contain and clean up a release from an UST that contains:

- Petroleum, where the spill exceeds 25 gallons or causes a sheen on a nearby surface water, or is less than 25 gallons but cannot be cleaned up within 24 hours.

- A CERCLA hazardous substance (listed at 40 CFR 302.4, Table 302.4) above the reportable quantity, or below the reportable quantity but cannot be cleaned up within 24 hours.

Following notification, response actions required for leaking USTs include taking immediate action to prevent any further release of the regulated substance into the environment, and identifying and mitigating fire, explosion, and vapor hazards. The owner/operator must submit a report summarizing initial abatement measures (usually within 20 days) including:

- Removal of the regulated substance from the UST;

- Inspection of aboveground or exposed below ground releases and preventing migration of the substance into surrounding soils and ground water;

- Continued monitoring and mitigating safety hazards;

- Remedying hazards posed by contaminated soils that have been excavated or exposed; measuring for the presence of a release where contamination is most likely to exist.

Several follow-up procedures (initial site characterization, free product removal, and investigations for soil and groundwater cleanup, and corrective action plan) may be required (see 40 CFR 280.63 - 280.66). State requirements for response and clean up activities vary; therefore be sure you contact the appropriate implementing agency (state or EPA region) for your facility for additional requirements that may apply. See Section 8.0 *How Do I Comply With the Hazardous Waste Regulations?* for more information.

9.4 Summary

This section has highlighted some of the similarities, differences, and complexities of EPA's planning, reporting, notification, and response requirements under the various federal statutes. The complexity stems, in part, from the differences in statutory approach. Some statutes have requirements that pertain to spills or releases to specific environmental compartments (e.g., water, air, land), whereas other statutes have requirements that focus on specific substances, irrespective of the environmental compartment to which they are released.

It is very important to understand the differences as well as the interconnections among these requirements in order to prepare the appropriate plans for your facility, complete the required reporting activities for hazardous materials that you have onsite, and respond appropriately to releases and spills. In addition, you may reduce your liability by preventing potential releases or responding properly in the event of a release. Don't rely solely on the information in this section to meet these requirements. You must review the regulations thoroughly to figure out your responsibilities and comply with them. Contact your EPA and state regulatory agencies for assistance and additional information.

SECTION 10 CONTENTS

10. Other Major Environmental Statutes and Regulations: CERCLA, RCRA Subtitle D, FIFRA and TSCA

In addition to the major statutes discussed previously in this guide, there are other environmental statutes and regulations that you must comply with as a food processing facility. These include:

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requirements apply to all food processing facilities that release hazardous substances into the environment.

- Subtitle D of the Resource Conservation and Recovery Act (RCRA). Subtitle D requirements apply to all food processing facilities that dispose of solid, nonhazardous wastes.

- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requirements apply only to those facilities that apply and store pesticides, such as herbicides, insecticides, and rodenticides.

- Toxic Substances and Control Act (TSCA). TSCA requirements apply to facilities subject to the TSCA Chemical Inventory Update, and may apply to those facilities that manage substances such as asbestos, chlorofluorocarbons (CFCs), and polychlorinated biphenyls (PCBs).

10.1 Comprehensive Environmental Response, Compensation, and Liability Act

Under CERCLA, commonly known as Superfund, EPA can respond to releases, or threatened releases, of hazardous substances that may endanger public health, welfare, or the environment. Under the **hazardous substance release reporting regulations** of CERCLA Section 103, (40 CFR 302), your facility is required to report to the National Response Center (NRC) any release into the environment of a hazardous substance that exceeds the reportable quantity for that substance. More than 700 hazardous substances are subject to the emergency notification requirements under CERCLA Section 103(a) (40 CFR 302.4) as well as those on the list of "extremely hazardous substances" under EPCRA (40 CFR 355). See Section 7.0 for more information about both EPCRA and CERCLA notification requirements.

In response to releases, EPA implements **hazardous substance responses** according to procedures outlined in the National Oil and Hazardous Substances Pollution Contingency Plan

(NCP) (40 CFR 300). The NCP includes provisions for permanent cleanups, known as remedial actions, and other cleanups referred to as "removals." While EPA generally takes remedial actions only at sites on the National Priorities List (NPL), which currently includes approximately 1300 sites, both EPA and states can act at other sites. In addition, EPA can force parties responsible for environmental contamination to clean up the contamination or reimburse the Superfund for response or remediation costs incurred by EPA. EPA encourages community involvement throughout the Superfund response process.

Note: EPA's RCRA/UST, Superfund and EPCRA Hotline at 1-800-424-9346 or 703-412-9810 provides information and references guidance pertaining to the Superfund program.

10.2 Subtitle D of the Resource Conservation and Recovery Act

Subtitle D of RCRA and its implementing regulations basically apply to the management of solid, nonhazardous waste and its disposal in landfills. See Section 8.0 *How Do I Comply With the Hazardous Waste Regulations?* for a definition of solid waste. A nonhazardous waste is defined as any garbage, refuse, or sludge from waste treatment plants, water treatment plants, or air pollution control equipment. Some examples of nonhazardous food processing solid wastes include discarded cardboard, food wastes, waste papers, and other food packaging materials. A description of typical solid wastes generated by food processing operations is presented in Section 3.0, Table 3-2 *Waste Analysis for SIC Code 203 Facility* of this guide. While this list is not all inclusive, it gives you a general idea of the kinds of solid wastes generated for each operation.

Subtitle D applies to your food processing facility because it prohibits open dumping of solid, nonhazardous wastes. Programs addressing the disposal of solid, nonhazardous wastes are developed and enforced at the state or local level. You should contact your state regulatory agency or a local reputable waste contractor for more information on proper disposal practices.

To reduce the volume of solid, nonhazardous wastes requiring land disposal, you are encouraged to recycle or reuse as many waste materials as possible. Keep in mind that all pollution prevention activities should be carried out in accordance with food safety requirements. Many states have recycling programs in place for a variety of waste materials, particularly glass, plastic, paper, and cardboard. You should contact your State Pollution Prevention Office to get information on the recycling programs available in your area. In addition to state programs, there may be local recycling requirements. Check with your local regulatory agency for more information. See Appendix B *Resources* for information on state contacts, etc.

10.3 Federal Insecticide, Fungicide, and Rodenticide Act

This section describes the requirements for managing pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as well as the requirements under the Food Quality Protection Act (FQPA).

10.3.1 Use of Pesticides in the Food Processing Industry

FIFRA primarily regulates the manufacture and registration of pesticides (40 CFR Parts 152 and 156), but important requirements also exist for pesticide **users**. Your food processing facility may at some time store, apply (or have applied), and dispose of pesticides. There are many types of pesticides, including herbicides, insecticides, rodenticides, and antimicrobial pesticides (e.g., disinfectants, sanitizers). Pesticides must be applied only according to label directions established by EPA. Using a pesticide in a manner inconsistent with its labeling constitutes misuse and is illegal [FIFRA Section 2 (ee)].

Pesticides can be used to control a variety of pests that are associated with food processing facilities in the U.S., including:

- Birds (e.g., English sparrows, pigeons, and starlings)
- Weeds
- Rodents (e.g. house mouse, rat, and roof rat)
- Insects (e.g., cockroaches, moths, beetles, flies, ants).

Herbicides can be used to eliminate or inhibit tree and weed growth around facilities, while insecticides and rodenticides may be used to control pests.

These pests can be controlled using direct application of the appropriate avicide, herbicide, rodenticide, or insecticide; or by fumigants. Fumigants are chemicals that are in the gas phase at effective temperatures, and they penetrate cracks, crevices, and the commodity being treated. Fumigants, while toxic to insects, rats, birds, mammals, weed seeds, nematodes and fungi, are also highly toxic to humans and may leave toxic residues or tastes or odors. Fumigants can be applied by several methods, are readily available, and are economical to use. They must be applied with the proper protective equipment and by certified applicators.

Antimicrobial pesticides comprise a broad range of products designed to control undesirable microorganisms such as bacteria, viruses, or algae on non-living objects (inanimate) or surfaces, and on raw fruits and vegetables (FIFRA Section 2(mm)(1)(A)). Some antimicrobial pesticides are used to sterilize, disinfect, or sanitize certain items, including food preparation areas. While primarily regulated under FIFRA, the FQPA changes the jurisdiction of some antimicrobial products from FIFRA to the FQPA (see Section 10.3.2). Since late 1996, the

Antimicrobials Division within EPA's Office of Pesticide Programs (OPP) has been responsible for all activities related to the regulation of antimicrobial pesticides. For more information on antimicrobial pesticides, access the OPP website at **http://www.epa.gov/oppfead1/cb/csb_page/qsas/antimic.htm/** or contact the Antimicrobial Division Ombudsman at 1-800-447-6349.

Requirements for Pesticide Use

FIFRA requires that all pesticides be registered for every intended use, and that labels containing instructions for proper storage, use, and disposal accompany each pesticide marketed. Application and handling requirements are specific to each pesticide product. Excess pesticides that must be disposed of may, in some cases, be considered hazardous waste, and must be managed accordingly (see Section 8.0 *How Do I Comply With the Hazardous Waste Regulations?*). Under FIFRA, the use of pesticides in a manner inconsistent with labeling established by EPA is illegal. You can be held responsible if any pesticides applied on your property are misapplied or mishandled. The "label is the law."

RUPs: When Your Facility Contracts for Pesticide Application. While some facilities may elect to hire a contractor for all of their pesticide applications, all facilities may have to contract out pesticide applications at one time or another. Under FIFRA, some pesticides, which are referred to as restricted use pesticides (RUPs), have been deemed by EPA to have high toxicity or to pose particular environmental hazards. Pesticide labels will clearly state whether a particular pesticide is restricted use only.

*When a pesticide is applied by a contractor, the contractor **and** the person contracting for the service may be held responsible for pesticide misuse.*

RUPs may only be applied by **certified** pesticide applicators; there are two types: "commercial" and "private." A **commercial** applicator is certified to apply pesticides to other people's property. Unless your facility chooses to certify some employees in pesticide application, applications of RUPs will require the use of a certified commercial applicator.

You should always verify that your contractor, or in the case of RUPs, the certified commercial applicator, uses the correct pesticide application rate and method. The pesticide label contains detailed information on appropriate rates and methods of application. The actual application should be observed to ensure that application methods are correct.

Non-RUPs: When Your Facility Applies Pesticides. For pesticides that are not restricted use (non-RUPs), you may purchase, store, apply, and dispose of these pesticides. Your selection of pesticide(s) should be based on the type of pests or weeds to be controlled, and the most environmentally sound applications. Best management practices (BMPs) for pesticide application include selecting pesticides with low mobility or toxicity to protect both humans and the environment, and use of pesticides that target individual pests or weeds. Alternatives should be considered when selecting a pesticide such

Selecting Pesticides*. Your local agricultural extension office can provide guidance when selecting the most appropriate pesticide to use. In addition, pesticide labels provide detailed information as to the appropriate use of a pesticide.*

as those that require the minimum amount of active ingredient to be applied to control a problem. See *Federal Register* notice 58 FR 26856.

Pesticide Storage. EPA has published guidelines for safe storage of pesticides and EPA may place storage conditions on a pesticide's label.

Application or Use of Pesticides. FIFRA requires that every pesticide be registered and labeled with both the appropriate application methods and the appropriate amounts to be used in a particular application. Pesticide application includes mixing and application of the pesticide. It is a violation of FIFRA to apply a pesticide in a manner inconsistent with its label. Therefore, carefully read the label of any pesticide used and use only the amounts specified by the label. To minimize potential environmental impacts, the minimum application rate that is effective should always be used. Section 2(ee) of FIFRA does allow for some variances to the label requirements.

> ***Inventory:*** *You should plan and order only the amounts of pesticides needed at the time of application. Manufactures may allow you to return unused or unopened products.*

Mixing should be conducted at a mixing site where structures exist to contain any spills. Check with your state before constructing pesticide mixing or loading sites to learn about state requirements affecting the location or placement of such a site.

Post-Application Clean Up and Pesticide Disposal. After pesticides are used, application equipment must be cleaned and empty containers disposed of. Consistent with the EPA label, some pesticide containers may be disposed of in municipal solid waste landfills; other containers may be disposed of in a licensed landfill or incinerator. The rinse water from clean up, if not reused, may be considered hazardous and should be disposed of accordingly. Disposal of **unused** pesticide product depends on the type of pesticide and EPA requirements on the label, such as incineration in a pesticide incinerator or other special treatment, or encapsulation and disposal at a properly licensed facility. EPA has proposed special requirements for the disposal of recalled or canceled pesticides under FIFRA Section 19, *Pesticide Management and Disposal*, 58 FR 26856, May 5, 1993. EPA expects to finalize these requirements in the Fall 1998.

> *Be sure to ask your disposal facility if they are licensed to accept the type of pesticide wastes you are disposing.*

Pesticide Use/Applicator Training. As noted above, certain pesticides are classified by the EPA as restricted use (RUPs) based on toxicity or environmental hazard. These pesticides may be applied only by a licensed certified applicator. EPA sponsors a Pesticide Applicator Training Program that is administered by the states, primarily through local agricultural extension offices. Contact your local extension office to receive training in pesticide application to become a licensed certified applicator.

Pesticide **worker protection standards** (WPSs) promulgated by EPA require that pesticide workers receive training in the proper application of pesticides within five days of entering an area where pesticides are being applied. EPA does not require right-of-way workers to comply with the WPS. However, it is good practice for employees working with pesticides to receive training to ensure that pesticides are applied properly.

Recordkeeping. Best management practices (BMPs) for pesticides include keeping accurate records of inventory, use, and storage for the following purposes: tracking when the next application should occur in accordance with label directions; managing inventory; responding in the event of an accidental spill or fire; and alerting emergency responders of stored pesticides.

10.3.2 Food Quality Protection Act

The Food Quality Protection Act (FQPA) of 1996 was a comprehensive overhaul of the laws that regulate pesticides in food: FIFRA and the Federal Food, Drug and Cosmetics Act (FFDCA). The new law amends both major pesticide laws to establish a more consistent, protective regulatory scheme.

EPA's Role. EPA plays a role under both of these statutes in regulating pesticides:

- Under FIFRA, EPA registers pesticides for use in the United States and prescribes labeling and other regulatory requirements to prevent unreasonable adverse effects on human health or the environment.

- Under the FFDCA, EPA establishes tolerances (maximum legally permissible levels) for pesticide residues in food. Tolerances are enforced by the U.S. Department of Health and Human Services (USDHHS)/FDA for most foods, and by the USDA/FSIS for meat, poultry, and some egg products.

Changes from FQPA. The FQPA made many revisions to the way pesticides are regulated:

Under the FFDCA, the new law establishes a health-based safety standard for pesticide residues in food; requires an explicit determination that tolerances are safe for children; sets limitations on benefits considerations; requires tolerance reevaluation; incorporates provisions for endocrine testing; includes enhanced enforcement of pesticide residue standards by allowing the FDA to impose civil penalties for tolerance violations; requires distribution of a brochure in grocery stores on the health effects of pesticides, how to avoid risks, and which foods have tolerances for pesticide residues based on benefits considerations; and does not allow states to set tolerance levels that differ from national levels unless the state petitions EPA for an exception, based on state-specific situations.

Note: The FQPA changed the jurisdiction of some antimicrobial products from FIFRA to the FQPA.

Under FIFRA, the new law requires tolerances to be reassessed as part of the reregistration program; requires EPA to periodically review pesticide registrations to ensure that all pesticides meet updated safety standards; expedites review of safer pesticides to help them reach the market sooner and replace older and potentially more risky chemicals; establishes minor use programs within EPA and USDA to foster coordination on minor use regulations and policy; and establishes new requirements to expedite the review and registration of antimicrobial pesticides. While some of these changes under the FQPA do not affect you directly as a regulated entity, it is to your benefit to be aware of these changes in the regulations affecting pesticides residues.

Environmental Stewardship. You should also be aware that there are opportunities for environmental stewardship. EPA's Pesticide Environmental Stewardship Program (PESP) is a voluntary program dedicated to protecting human health and the environment by reducing both the use of pesticides and the risks associated with pesticide use. Current partners include agricultural producers as well as non-agricultural interests. Partners in PESP volunteer to develop and implement a well-designed pesticide management plan that will result in the safest and most effective way to use pesticides. In turn, EPA provides a liaison to assist the partner in developing comprehensive, achievable goals. Liaisons act as customer service representatives for EPA, providing the partner with access to information and personnel. EPA also will attempt to integrate the partners' stewardship plans into its agricultural policies and programs. For more information, call the PESP Hotline at 1-800-972-7717 or access the PESP webpage at **http://es.epa.gov.partners/pest/pest.html/.**

10.4 Toxic Substances Control Act

Under TSCA, EPA collects data on chemicals in order to evaluate, assess, mitigate, and control risks which may be posed by their manufacture, processing, and use. TSCA provides a variety of control methods to prevent chemicals from posing unreasonable risk, and the standards may apply at any point during a chemical's life cycle. Some food processing may be subject to the TSCA Chemical Inventory Update (see below) based on the type and quantity of substances they manufacture. Facilities may also be subject to requirements for asbestos, CFCs, and PCBs.

Regulated Substances under TSCA. You should be aware that drugs, cosmetics, foods, food additives, pesticides, and nuclear materials are **exempt from TSCA** and are subject to control under other federal statutes (e.g., foods and food additives are under the purview of the Federal Food, Drug and Cosmetics Act (FFDCA) administered by the FDA. In order for a food or food additive to be exempt, however, it must meet the definition contained in the FFDCA (21 USC 321 et seq.), or related statutes such as the Poultry Products Inspection Act and the Federal Meat Inspection Act. If the food or food additive does not meet the definition, the substance may then be regulated under TSCA and is subject to all the requirements of TSCA including testing, premanufacture notice, reporting and recordkeeping, export notification, and import certification. For example, vegetable oils and their derivatives from vegetable processing that are used as an ingredient in lubricants, paints, inks, fuels, plastics, solvents and a variety of other industrial products are subject to all of TSCA's requirements.

TSCA Chemical Inventory Update Reporting. Under TSCA Section (8)(a), manufacturers and importers of certain chemical substances are required to report the specific chemical identity and quantity, and site of manufacture or importation of these substances every four years. This is known as the *TSCA Chemical Inventory Update*; and the next four-year reporting period begins in August 1998 and ends in December 1998.

If you are manufacturing substances, such as vegetable oil and animal fats, that are used for non-food purposes (e.g., in inks), you must comply with requirements of the Inventory Update. Certain exemptions are available to small manufacturers under 40 CFR 710.28. EPA uses this information to update its *TSCA Chemical Substances Inventory* database. EPA relies on the accuracy of this data to monitor and estimate health and safety risks to people and the

environment as well as to formulate control and preventive responses. Note: Other EPA programs may develop site-specific information on public and environmental risks as needed. EPA also incorporates reported information into its regulatory decision-making process to assure responsive and effective regulation of the chemical industry.

To determine your reporting obligations, you must make two determinations for each substance that you manufacture in the United States or import into the United States:

(1) Is the substance reportable under the Inventory Update Rule? If you do not already know whether a substance you manufacture or import is on the Inventory, you should consult a copy of the latest version of the inventory. To obtain a copy (at a cost), call the Superintendent of Document, Government Printing Office at (202) 783-3238, or call the TSCA Assistance Information Service at 202-554-1404.

(2) Are you a manufacturer, importer, or exporter who is required to report that substance? Generally, if you manufacture or import 10,000 lbs or more of a reportable substance at any single site during the fiscal year preceding the reporting period, you are required to report. Small manufacturers are usually exempt from the reporting under the Inventory Update Rule; however, there are some conditions under which they must report.

There are requirements for when and how to report the information for the Inventory Update Rule. There are also recordkeeping requirements. You must maintain records that document the information contained in your submissions. Required records include those that show the production volume, plant site, and site-limited status of each substance reported. These records must be kept for four years after the effective date of the applicable reporting period.

If you are manufacturing or importing a chemical substance that is not already on the inventory (and has not been excluded by TSCA), you must submit a premanufacture notice (PMN) prior to manufacture or importation (40 CFR 720). The PMN must identify the chemical and provide available information on health and environmental effects. If available data are not sufficient to evaluate the chemical's effects, EPA can impose restrictions pending the development of information on its health and environmental effects. EPA also can restrict significant new uses of chemicals based upon factors such as the projected volume and use of the chemical.

Reporting and Recordkeeping Requirements. Section 8 of TSCA authorizes EPA to require chemical manufacturers, importers, and processors to keep records and report certain information. TSCA Section 12 requires the submission to EPA of certain information about chemical exports, while Section 13 requires the submission of certification statements concerning import shipments of chemical substances. These additional requirements under TSCA are summarized below:

- **Alleged Significant Adverse Reactions.** Under TSCA Section 8(c), if you manufacture, import, process, or distribute chemical substances or mixtures in commerce, you are required to keep files of allegations of significant adverse reactions and provide this information to EPA upon request.

- **Health and Safety Studies Submission.** Under TSCA Section 8(d), if you manufacture, import, process, or propose to manufacture, import, process listed chemicals, you are required to submit lists or copies of unpublished studies to EPA.

- **Substantial Risk Reporting.** Under TSCA Section 8(e), if you manufacture, import, process, or distribute a chemical substance or mixture and obtain "new" information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment, you are required to report such information to EPA within 15 days.

- **Exports.** Under TSCA Section 12, if you export chemicals subject to final and certain proposed rules and orders under TSCA Sections 4, 5, 6 and 7, you are required to notify EPA of the country of destination the first time a chemical is shipped to that country during a calendar year.

- ***Imports.*** Under TSCA Section 13, if you import chemical substances, you are required to certify that each shipment is in compliance with TSCA or is not subject to TSCA.

Asbestos, CFCs, and PCBs. There may be other substances, including asbestos, CFCs, and PCBs, at your food processing facility which are regulated under Section 6 of TSCA. Because these substances pose unreasonable risks, EPA can ban the manufacture or distribution in commerce, limit the use, require labeling, or place other restrictions on these substances (40 CFR 750). If you have these substances onsite, you should check with your EPA and/or state regulatory agencies for information on federal and/or state requirements for these substances. For additional assistance, contact the TSCA Assistance Information Service at 202-554-1404.